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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 13-23469-E-13
)	Docket Control No. DO-1
RONALD ALLAN SHAFER and)	
JILL ELAINE SHAFER,)	
)	
Debtor(s).)	

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION

The court has been presented with an Objection to Confirmation of the Chapter 13 Plan proposed by Ronald and Jill Shafer ("Debtors"). Westamerica Bank ("Creditor") and the Chapter 13 Trustee asserts that the proposed plan fails to provide the Debtors' projected disposable income as required by 11 U.S.C. § 1325(b)(1). It is asserted that the Debtors home mortgage, insurance, and tax expense exceed that permitted for over-median income debtors. It is further contended that the Debtors do not provide sufficient income information, and that the Debtors' expenses exceed the amounts allowed for over-median income Debtors pursuant to 11 U.S.C. §§ 707(b)(2) and 1325(b)(3). Proper notice of the Objection was provided pursuant to Local Bankruptcy Rule

1 9014-1 and 3015-1(c)(4).

2 Upon consideration of the evidence presented and computation
3 of expenses as mandated by 11 U.S.C. §§ 707(b)(2) and 1325(b)(3),
4 the court determines that the proposed plan payment of \$248.00 a
5 month fails to provide all of the Debtors' projected disposable
6 income to fund this plan. Confirmation of the plan is denied.

7 **OBJECTION TO CONFIRMATION**

8 Creditor opposes confirmation of the Plan on several separate
9 and independent grounds. Creditor asserts a claim arising out of a
10 \$150,000.00 commercial loan to Burger City, Inc., which is secured
11 through a Commercial Security Agreement. Creditor states that the
12 corporation pledged as collateral all equipment, accounts, and
13 general intangibles.

14 Creditor states that Burger City, Inc. is privately held,
15 with the Debtors owning 60% of the outstanding shares and other
16 members of Debtors' family owning the remaining shares. Creditor
17 argues that Burger City, Inc., an insider of Debtors, generates
18 substantial gross revenues which are not accounted for in this
19 case. Creditor's claim against the Debtors is based on a
20 Commercial Guaranty given by the Debtors for the Burger City, Inc.
21 debt to Creditor. Creditor asserts that as of the Petition date
22 the corporation owed \$137,566.39 on the loan.

23 Creditor directs the court to the proposed plan and
24 information provided under penalty of perjury by the Debtors that
25 they will receive \$6,400.00 per month from Burger City, Inc.
26 However, on Schedule B Debtors value their interest in this
27 corporation at \$0.00.

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1 The first basis for objecting to confirmation by Creditor is
2 that Debtors do not have regular income since the corporation
3 distributes \$6,400.00 per month to Debtors. Creditor argues that
4 these distributions are not "regular income" since there is no
5 showing that Debtors have or will regularly receive this amount.
6 Creditor argues that since Burger City, Inc. has defaulted on the
7 payment due Creditor, there is no reason to believe Burger City,
8 Inc. can pay Debtors the \$6,400.00 per month to fund the proposed
9 Chapter 13 Plan. Creditor contends that at minimum more
10 information is needed regarding how Debtors will be able to fund
11 the plan.

12 Second, Creditor argues that Debtors have not demonstrated
13 that they have disposable income to fund the plan since Debtors
14 have not shown that they have signature authority over corporate
15 funds. This is a variant of the first objection.

16 Third, building off the relationship between the Debtors and
17 Burger City, Inc., Creditor states that Debtors must submit their
18 future income to the control of the Chapter 13 Trustee. Absent a
19 transparency in operations, it will be difficult for Trustee to
20 confirm that Debtors are submitting their disposable income to the
21 Trustee over the life of the plan.

22 Fourth, Creditor states that its claim is unsecured and the
23 plan improperly classifies the claim in Class 2. Creditor argues
24 that simply because Debtor pledged equipment owned by Debtor to
25 secure the debt of the corporation, does not mean that Debtors'
26 guaranty was secured. Creditor argues that the plan cannot be
27 confirmed over its objection unless Debtors cure the corporation's
28 default.

1 Fifth, Creditor argues that the plan relies on a motion to
2 value claim of Wilmington Trust Company set for hearing May 14,
3 2013. The court's decision is to grant the motion.

4 Sixth, Creditor argues that the plan may not be Debtors' best
5 effort since Debtors have not provided sufficient information
6 regarding amounts generated by the corporation.

7 Creditor finally argues that the plan is not feasible. The
8 plan is funded by income the Debtors expect to receive from Burger
9 City, Inc. Further, that this assumption is unrealistic given that
10 Burger City, Inc. is not paying its debts as they come due,
11 including the obligation to WestAmerica Bank. Therefore, Creditor
12 asserts that a plan dependent on continued income from an insolvent
13 corporation is not feasible.

14 CHAPTER 13 TRUSTEE'S OBJECTION

15 The Chapter 13 Trustee filed a Supplemental Brief in Support
16 of Objection to Confirmation pursuant to 11 U.S.C. § 1325(b). The
17 Trustee asserts that Schedule I states the income of the Debtor at
18 the time of filing and projected for the first year (based on line
19 17) of the Chapter 13 Plan. The Trustee further contends that
20 Schedule J similarly states Debtors' expenses at the time of filing
21 and projected for the first year of the Plan.

22 The Trustee asserts that the Debtor must pay in their
23 projected disposable income if the Trustee or an unsecured creditor
24 objects for the applicable commitment period of the plan.
25 Projected disposable income appears to the amount of Form 22C,
26 Line 59, as modified by the projected changes on Schedule I & J.

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1 In his analysis of Form 22C, the Chapter 13 Trustee states the
2 Internal Revenue Service standards for California are to be used in
3 examining the housing and utility expenses. The Chapter 13 Trustee
4 notes that the U.S. Trustee website maintains an area where they
5 present these expenses on a current and historic basis, while the
6 IRS does not provide a breakdown of the categories. Form 22C
7 provides to use the US Trustee website and the IRS website provides
8 to use the U.S. Trustee website.

9 The Chapter 13 Trustee provides an analysis, by which he
10 concludes that the Debtors have failed to provide their projected
11 disposable income to fund the plan for the applicable commitment
12 period. The Chapter 13 Trustee calculates that the Debtors must
13 fund projected disposable income payments of \$1,121.00 a month as
14 required by 11 U.S.C. § 1325(b)(1)(B). With a proposed monthly
15 plan payment of only \$248.00, the Trustee asserts that the Debtors
16 have underfunded the Chapter 13 Plan by \$873.00 a month.

17 The Chapter 13 Trustee also objects based on the evidentiary
18 record. The petition discloses the Debtors has a DBA of "Burger
19 City, Inc." and FDBA of "Pasta City Express." Schedule B discloses
20 a 60% ownership interest in Burger City, Inc. and a 30% partnership
21 interest in "5.5 acres Browns Valley," valuing both at \$0.00.
22 Schedule I discloses income from Burger City, Inc. but no business
23 expenses are listed and the monthly income of Burger City, Inc. is
24 not disclosed.

25 DEBTORS' RESPONSE

26 Debtors argue that 11 U.S.C. § 707(b)(2)(A)(iii)(II) provides
27 for the allowance of "any additional payments to secured creditors
28 necessary for the debtor, in filing a plan under Chapter 13 of this

1 title to maintain possession of the debtor's primary residence,
2 motor vehicle, or other property necessary for the support of the
3 debtor and the debtor's dependents, that serves as collateral for
4 secured debts." Debtors argue that the court is given a level of
5 discretion when it comes to the amounts paid on secured debt
6 necessary to maintain possession of the debtor's residence pursuant
7 to 11 U.S.C. § 707(b)(2)(A)(iii)(II).

8 Debtors also argue that the Internal Revenue Service is "open"
9 to allowing actual expenses of delinquent taxpayers who show
10 documentation that using the standards leaves them an inadequate
11 means of providing for basic living expenses. Thus, the Debtors
12 contend that the court is not limited by what Congress has provided
13 in this Bankruptcy Code Section, but has the ability to allow
14 whatever expenses the court believes that the Internal Revenue
15 Service would allow.

16 The Debtors seek to distinguish *Drummond v. Welsh*, 711 F.3d
17 1120 (9th Cir. 2013), from the present case on the basis that the
18 Debtors have no social security income, have no secured debts other
19 than their residence and Creditor, and have a total unsecured debt
20 of \$26,100.00 (excluding Creditor's unsecured claim). Additionally,
21 Debtors point out that the *Drummond* court did not address a
22 situation of whether those debtors' mortgage payment exceeded the
23 amount specified under the IRS Standards for housing expense
24 applicable in Montana.

25 Debtors contend that they believe they prepared their Means
26 Test accurately, save for a minor difference of \$30.00 on their
27 income tax amount - line 30 - which should be \$928.00 not \$958.00.
28 Debtors also argue the alleged "excessive" expenses of \$873.00 are

1 related to their secured housing payment, which "additional" amount
2 is asserted to be specifically provided for in
3 § 707(b)(2)(a)(iii)(II). Debtors state they have accurately and
4 truthfully detailed their income and expenses and are current on
5 their first mortgage. Debtors argue that the mere fact that the
6 residence is worth less than the balance due on the first mortgage
7 does not make the property unnecessary for the debtors' effective
8 reorganization.

9 Debtors argue that if they are unable to retain their family
10 home, the idea of a fresh start is unattainable, as is the purpose
11 of the Chapter 13 bankruptcy. Debtors premise this on the annual
12 mortgage interest deduction of \$13,434.54 for the payments made on
13 their home mortgage. Without providing the tax computation
14 methodology, the Debtors argue in their Response that if they did
15 not have this, their tax withholding per month would be
16 considerably more than the \$928.00 currently listed on their
17 Schedule I. The Debtors believe that the withholding, based on
18 their unstated tax bracket, would be at least \$1,000.00 more per
19 month.

20 No tax calculation for this contention has been provided, and
21 the court does not understand how the loss of an interest deduction
22 (for which the Debtors benefit is the incremental tax rate at with
23 the interest deduction is applied) is equal to the total interest
24 payment. However, given that the interest deduction of \$13,434.54
25 averages \$1,119.55 a month, the Debtors are apparently contending
26 that their incremental tax rate is 100%.

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1 With gross income of \$7,300.00 a month, and without taking
2 into account any other deductions or credits, the maximum taxable
3 income would be \$87,600.00. Using the 2012 tax table for Head of
4 Household for Form 1040, the Debtors federal taxes would be
5 \$6,482.50, plus 25% of amounts over \$47,350.00. The incremental
6 tax rate for the monies subject to the \$13,434.54 interest
7 deduction is 25%, yielding a tax savings of \$3,358.64. If the
8 interest deduction was not taken, then the additional federal
9 income tax amount would be only \$279.89 a month, not the "more than
10 \$1,000.00 a month" postulated by the Debtors. However, the Debtors
11 would have an additional \$10,075.90 of cash (the \$13,434.54 in
12 monies not used to pay interest, less the \$3,358.64 in taxes paid
13 on the monies not paid for interest) to pay necessary expenses or
14 creditors.

15 Debtors contend that trying to meet the "fictional" payment of
16 \$1,121.00 computed by the Chapter 13 Trustee and still retain their
17 home, the Debtors are left with few choices. Mr. Shafer works two
18 jobs and it would be difficult for him to find a third.
19 Mrs. Shafer could get a second job, but they would then need to
20 expend funds for the care of their 11 year old daughter and
21 transportation expenses would increase. However, the Debtors do
22 not consider the apparently unthinkable third alternative - what
23 they would do if they did not try to retain a home, for which the
24 mortgage payment, taxes, and insurance consume 50% of their monthly
25 net income. (\$3,121.00 payment/\$6,372.00 monthly net income, which
26 does not take into account expenses and taxes for the \$900.00 a
27 month in real estate commissions).

28 Lastly, Debtors argue that although *Drummond* provided insight

1 into the court's view of the result of Congress' adoption of the
 2 means test in terms of reducing the bankruptcy court's discretion
 3 to review income and debt payment, it did not address the
 4 predicament of debtors whose housing expense exceeds the standards,
 5 but who have no secured vehicles to "offset" that excess. The
 6 Debtors do not explain how having more secured debt would make the
 7 \$3,121.00 in payments for their home more reasonable, or feasible.

8 DISCUSSION

9 The Debtors' Chapter 13 Plan provides for a monthly payment of
 10 \$248.00 for 36 months. The Chapter 13 Plan provides for the
 11 \$248.00 to be paid as follows:

- | | | | |
|----|----|---|------------------|
| 12 | A. | Administrative expenses | \$225.00 a month |
| 13 | | 1. Debtors' Counsel to be paid \$3,000, | |
| 14 | | which is \$83.55 a month | |
| 15 | | 2. Chapter 13 Trustee expenses projected | |
| | | at 8% to be \$20.00 a month | |
| 16 | B. | Class 1 Secured Claims | No Claims Paid |
| 17 | C. | Class 2 Secured Claims | |
| 18 | | 1. Creditor, \$4,100 secured claim | \$211.35 a month |
| 19 | | 506(a) Value of \$4,100.00 | |
| 20 | | 2. Wilimington Trust Secured Claim | \$0.00 a month |
| | | 506(a) Value of \$0.00 | |
| 21 | D. | Class 3 Secured | |
| 22 | | 1. Surrender of Browns Valley Property to | |
| 23 | | Tax Collector and lien holder. | |
| 24 | E. | Class 4 Secured - Direct Debtor Payment | |
| 25 | | 1. \$3,121.00 a month to Select Portfolio | |
| 26 | | Servicing, Inc. for claim secured by | |
| | | 1018 Vintage Court. Claim of \$555,331.00 | |
| 27 | | secured by property with a value of | |
| | | \$378,000.00. Schedules A and D, Dckt. 1. | |
| 28 | F. | Class 5 Unsecured Priority | None |
| | G. | Class 6 Special Unsecured | None |

1 H. Class 7 General Unsecured Claim 0.00% Dividend
2 Plan, Dckt. 5.

3 On its face, it appears that the \$248.00 a month in plan
4 payments is insufficient to fund the \$225.00 in administrative
5 expenses and the \$211.35 to Creditor.

6 While Creditor expends time addressing why Burger City, Inc.
7 cannot be a Chapter 13 Debtor, such is not now before the court.
8 What is before the court are two individual Debtors who have an
9 interest in a corporation which employs the Debtors. The Plan
10 attempts to provide for the secured claim of Creditor, the value of
11 the collateral owned by the Debtors, and the Creditor's unsecured
12 claim. Presumably, Creditor is enforcing whatever rights it has
13 against the non-bankruptcy debtor entities and the collateral owned
14 by those entities.

15 Further, Creditor complains that since the Debtors have an
16 interest in a corporation from which they derive their income, that
17 is somehow a *per se* basis for denying confirmation. Such an
18 assumption is incorrect. Creditor is free to conduct any and all
19 such discovery in this bankruptcy case as appropriate into the
20 finances of Burger City, Inc. Quite possibly, Creditor already has
21 all of the financial information and could enlighten the court as
22 to whether the \$6,400.00 a month in income is reasonable and
23 truthful for the Estate's interest in Burger City, Inc.

24
25 **EXPENSES PERMITTED IN COMPUTATION OF
PROJECTED DISPOSABLE INCOME**

26 In substance, the Debtors seek to confirm a plan which diverts
27 \$3,121.00 a month to pay a mortgage on property which is well
28 underwater and is of no economic benefit to the estate. The

1 \$3,121.00 a month appears to be well in excess of what would be a
2 reasonable housing expense for a Chapter 13 Debtor under the
3 Internal Revenue Service Guidelines. The Debtors contend that this
4 expense (which consumes 50% of their monthly net income) is proper
5 because the house is "necessary" for any effective reorganization.

6 Creditor, which holds a substantial unsecured claim in this
7 case, and the Chapter 13 Trustee have objected based on the Debtors
8 not funding the plan with their projected disposable income and
9 that the plan has not been proposed in good faith, based on the
10 housing expense.

11 Pursuant to 11 U.S.C. § 1325(a)(3) a plan must be proposed in
12 good faith. Courts apply the totality of the circumstances test in
13 making a good faith determination and consider several factors in
14 determining whether a plan was proposed in good faith, including:

- 15 1. Whether the proposed plan accurately states debtor's
16 secured and unsecured debts;
- 17 2. Whether the proposed plan accurately states debtor's
18 expenses;
- 19 3. Whether the proposed plan accurately states the
20 percentage repayment of unsecured claims;
- 21 4. Whether the proposed plan has deficiencies and whether
22 the inaccuracies amount to an attempt to mislead the
23 bankruptcy court;
- 24 5. Whether the proposed payments indicate a fundamental
25 fairness in dealing with one's creditors.

26 *In re Powers*, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991) (citing *In*
27 *re Smith*, 848 F.2d 813, 818 (7th Cir. 1984)). Although good faith
28 in a Chapter 13 proceeding is determined on a case by case basis,
a debtor must at minimum show that he or she has an honest
intention. *In re Powers* at 992. One factor courts consider is
whether the debtor acted equitably in proposing the Chapter 13 plan

1 and whether a debtor has misrepresented facts in the plan, unfairly
2 manipulated the Bankruptcy Code, or otherwise proposed a plan in an
3 inequitable manner. *Id.* at 992.

4 Prior to 2005 the bankruptcy judge was given a great amount of
5 discretion in determining a debtor's good faith in proposing a plan
6 and what expenses were reasonable and necessary. However, that
7 changed with the 2005 BAPCPA amendments to the Bankruptcy Code.
8 Congress restricted the court's discretion with respect to above
9 median income debtors with respect to the expenses permitted in
10 computing projected disposable income. In *Drummond* the Ninth
11 Circuit Court of Appeals explains this Congressional limitation on
12 discretion and considering the "totality of the circumstances" for
13 the above-median income debtor.

14 In 2005, Congress again revised Chapter 13 when it
15 enacted the Bankruptcy Abuse Prevention and Consumer
16 Protection Act ("BAPCPA"). The good faith requirement
17 under § 1325(a) remained the same, but there were
18 significant changes with respect to the calculation of
19 disposable income. Before the BAPCPA, bankruptcy judges
20 had authority to determine a debtor's ability to pay
21 based on the individual circumstances of each case and
22 each debtor. **Congress replaced this discretion with a
23 detailed, mechanical means test, which requires debtors
24 with above-median income to calculate their 'disposable
25 income' by subtracting specific expenses from 'current
26 monthly income,' as defined by the Bankruptcy Code.** For
our purposes, several elements of this calculation are
important. The debtor begins with his 'current monthly
income,' which, by definition, explicitly 'excludes
benefits received under the Social Security Act.' The
debtor then subtracts living expenses based on the
Internal Revenue Service's 'Collection Financial
Standards,' a detailed series of averages for living
expenses that the Service uses to calculate necessary
expenditures for delinquent taxpayers. The debtor also
subtracts his averaged payments to secured creditors due
during the following sixty months.

27 ...
28 Section 1325 states that disposable income is
current monthly income 'less amounts reasonably necessary
to be expended- . . . for the maintenance or support of
the debtor or a dependent of a debtor.' 11 U.S.C.
§ 1325(b)(2) (2006). Section 1325 further provides that

1 '[a]mounts reasonably necessary to be expended under
 2 paragraph (2) . . . shall be determined in accordance
 3 with subparagraphs (A) and (B) of section 707(b)(2).' 11 U.S.C. § 1325(b)(3) (emphasis added). For its part,
 4 section 707(b)(2) provides that current monthly income
 5 shall be reduced by '[t]he debtor's average monthly
 6 payments on account of secured debts,' 11 U.S.C.
 7 § 707(b)(2)(A)(iii); that section, however, does not
 8 include any qualification or limitation on the kind of
 9 secured debt that is deducted from current monthly
 10 income. As we recognized in *Maney v. Kagenveama* (*In re*
 11 *Kagenveama*), 541 F.3d 868, 873 n.2 (9th Cir. 2008),
 12 overruled on other grounds by *Hamilton v. Lanning*, 130 S.
 13 Ct. 2464, 2475, 177 L. Ed. 2d 23 (2010), prior to the
 14 BAPCPA,

9 '[d]etermining what was 'reasonably necessary'
 10 for the maintenance or support of the debtor
 11 was dependent on each debtor's individual
 12 facts and circumstances. This amorphous
 13 standard produced determinations of a debtor's
 14 'disposable income' that varied widely among
 15 debtors in similar circumstances. BAPCPA
 16 replaced the old definition of what was
 17 'reasonably necessary' with a formulaic
 18 approach for above-median debtors. 11 U.S.C.
 19 § 1325(b)(3).'

15 Again, in the BAPCPA, Congress chose to remove from
 16 the bankruptcy court's discretion the determination of
 17 what is or is not 'reasonably necessary.' It substituted
 18 a calculation that allows debtors to deduct payments on
 19 secured debts in determining disposable income. That
 20 policy choice may seem unpalatable either to some judges
 21 or to unsecured creditors. Nevertheless, that is the
 22 explicit choice that Congress has made. We are not at
 23 liberty to overrule that choice.

20 . . . The calculation of 'disposable income' under the
 21 BAPCPA requires debtors to subtract their payments to
 22 secured creditors from their current monthly income. In
 23 enacting the BAPCPA, Congress did not see fit to limit or
 24 qualify the kinds of secured payments that are subtracted
 25 from current monthly income to reach a disposable income
 26 figure. Given the very detailed means test that Congress
 27 adopted, we cannot conclude that this omission was the
 28 result of oversight. Moreover, even if it were, we would
 not be justified in imposing such a limitation under 'the
 guise of interpreting 'good faith.'

26 *Drummond v. Welsh*, 711 F.3d at 1129-1130, 1133-1135 [footnotes
 27 omitted, emphasis added].

28 ///

1 This court has reviewed Form F22C, the "Means Test Form" filed
 2 by the Debtors. Dckt. 1 at 43-49. Under penalty of perjury the
 3 Debtors state that they are above median income debtors. As
 4 instructed by the Ninth Circuit Court of Appeals, the court
 5 considers the calculation of the Debtors expenses, as "cabined" by
 6 Congress with the BAPCPA amendments, making the 707(b) calculation.

7 Neither the Debtors nor the objecting creditor initially
 8 provided the court with their computation of this necessary
 9 calculation. For the over-median income debtor the Bankruptcy Code
 10 requires that the expenses for computing projected disposable
 11 income are,

12 (2) For purposes of this subsection, the term "disposable
 13 income" means current monthly income received by the
 14 debtor (other than child support payments, foster care
 15 payments, or disability payments for a dependent child
 made in accordance with applicable nonbankruptcy law to
 the extent reasonably necessary to be expended for such
 child) **less amounts reasonably necessary to be expended—**

16 (A) (I) for the maintenance or support of the
 17 debtor or a dependent of the debtor, or for a domestic
 support obligation, that first becomes payable after the
 18 date the petition is filed; and

19 (ii) for **charitable contributions** (that meet
 the definition of "charitable contribution" under section
 548 (d) (3)) to a qualified religious or charitable entity
 20 or organization (as defined in section 548 (d) (4)) in an
 amount not to exceed 15 percent of gross income of the
 21 debtor for the year in which the contributions are made;
 and

22 (B) if the debtor is engaged in business, for the
 23 payment of **expenditures necessary for the continuation,**
preservation, and operation of such business.

24 (3) **Amounts reasonably necessary to be expended under**
 25 **paragraph (2), other than subparagraph (A) (ii) of**
 26 **paragraph (2), shall be determined in accordance with**
 27 **subparagraphs (A) and (B) of section 707 (b) (2), if the debtor**
 has current monthly income, when multiplied by 12, greater
 than—

28 (A) in the case of a debtor in a household of
 1 person, the median family income of the applicable

1 State for 1 earner;

2 (B) in the case of a debtor in a household of 2, 3,
3 or 4 individuals, the highest median family income of the
4 applicable State for a family of the same number or fewer
5 individuals; or

6 (C) in the case of a debtor in a household
7 exceeding 4 individuals, the highest median family income
8 of the applicable State for a family of 4 or fewer
9 individuals, plus \$525 per month for each individual in
10 excess of 4.

11 11 U.S.C. § 1325(b)(2), (3).

12 The Debtors being above-median income debtors, the court turns
13 to 11 U.S.C. § 707(b)(2) to determine the reasonable, necessary,
14 and proper expenses for these Debtors in this Chapter 13 case. In
15 pertinent part, 11 U.S.C. § 707(b)(2)(A)(ii) provides,

16 (ii)

17 (I) The debtor's monthly expenses shall be the
18 debtor's applicable monthly expense amounts specified
19 under the National Standards and Local Standards, and the
20 debtor's actual monthly expenses for the categories
21 specified as Other Necessary Expenses issued by the
22 Internal Revenue Service for the area in which the debtor
23 resides, as in effect on the date of the order for
24 relief, for the debtor, the dependents of the debtor, and
25 the spouse of the debtor in a joint case, if the spouse
26 is not otherwise a dependent. Such expenses shall include
27 reasonably necessary health insurance, disability
28 insurance, and health savings account expenses for the
debtor, the spouse of the debtor, or the dependents of
the debtor. Notwithstanding any other provision of this
clause, the monthly expenses of the debtor shall not
include any payments for debts. In addition, the debtor's
monthly expenses shall include the debtor's reasonably
necessary expenses incurred to maintain the safety of the
debtor and the family of the debtor from family violence
as identified under section 302 of the Family Violence
Prevention and Services Act, or other applicable Federal
law. The expenses included in the debtor's monthly
expenses described in the preceding sentence shall be
kept confidential by the court. In addition, if it is
demonstrated that it is reasonable and necessary, the
debtor's monthly expenses may also include an additional
allowance for food and clothing of up to 5 percent of the
food and clothing categories as specified by the National
Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may
include, if applicable, the continuation of actual
expenses paid by the debtor that are reasonable and

1 necessary for care and support of an elderly, chronically
2 ill, or disabled household member or member of the
3 debtor's immediate family (including parents,
4 grandparents, siblings, children, and grandchildren of
the debtor, the dependents of the debtor, and the spouse
of the debtor in a joint case who is not a dependent) and
who is unable to pay for such reasonable and necessary
expenses.

5
6 (III) In addition, for a debtor eligible for
chapter 13, the debtor's monthly expenses may include the
7 actual administrative expenses of administering a
chapter 13 plan for the district in which the debtor
8 resides, up to an amount of 10 percent of the projected
plan payments, as determined under schedules issued by
the Executive Office for United States Trustees.

9
10 (IV) In addition, the debtor's monthly expenses may
include the actual expenses for each dependent child less
11 than 18 years of age, not to exceed \$1,500 per year per
child, to attend a private or public elementary or
12 secondary school if the debtor provides documentation of
such expenses and a detailed explanation of why such
13 expenses are reasonable and necessary, and why such
expenses are not already accounted for in the National
Standards, Local Standards, or Other Necessary Expenses
14 referred to in subclause (I).

15 (V) In addition, the debtor's monthly expenses may
include an allowance for housing and utilities, in excess
16 of the allowance specified by the Local Standards for
housing and utilities issued by the Internal Revenue
17 Service, based on the actual expenses for home energy
costs if the debtor provides documentation of such actual
18 expenses and demonstrates that such actual expenses are
reasonable and necessary.

19
20 (iii) The debtor's average monthly payments on
account of secured debts shall be calculated as the sum
of—

21
22 (I) the total of all amounts scheduled as
contractually due to secured creditors in each month of
23 the 60 months following the date of the filing of the
petition; and

24 (II) any additional payments to secured creditors
25 necessary for the debtor, in filing a plan under chapter
13 of this title, to maintain possession of the debtor's
26 primary residence, motor vehicle, or other property
necessary for the support of the debtor and the debtor's
27 dependents, that serves as collateral for secured debts;
divided by 60.

28 (iv) The debtor's expenses for payment of all
priority claims (including priority child support and

1 alimony claims) shall be calculated as the total amount
2 of debts entitled to priority, divided by 60.

3 The Debtors request that as part of this formulaic calculation
4 mandated by Congress the court allow special and additional
5 amounts, based on the totality of the circumstances, in excess of
6 the Internal Revenue Service Guideline stated amounts. Congress
7 addressed in § 707(b)(2)(B) when the bankruptcy judge could
8 exercise such discretion for an over-median income debtor.

9 (B) (I) In any proceeding brought under this subsection,
10 the **presumption of abuse may only be rebutted by**
11 **demonstrating special circumstances, such as a serious**
12 **medical condition or a call or order to active duty in**
13 **the Armed Forces, to the extent such special**
14 **circumstances that justify additional expenses or**
15 **adjustments of current monthly income for which there is**
16 **no reasonable alternative.**

17 (ii) in order to establish special circumstances,
18 the **debtor shall be required to itemize** each additional
19 expense or adjustment of income and to provide—

20 (I) **documentation** for such expense or adjustment to
21 income; and

22 (II) a **detailed explanation of the special**
23 **circumstances that** make such expenses or adjustment
24 to income necessary and reasonable.

25 (iii) The debtor shall **attest under oath to the**
26 **accuracy of any information** provided to demonstrate that
27 additional expenses or adjustments to income are
28 required.

(iv) The presumption of abuse may only be rebutted
if the additional expenses or adjustments to income
referred to in clause (I) cause the product of the
debtor's current monthly income reduced by the amounts
determined under clauses (ii), (iii), and (iv) of
subparagraph (A) when multiplied by 60 to be less than
the lesser of—

(I) 25 percent of the debtor's nonpriority
unsecured claims, or \$6,000, whichever is
greater; or

(II) \$10,000.

11 U.S.C. § 707(b) [emphasis added].

Congress has directed that the secured debt payments are "reasonable" if they are the contract amount. 11 U.S.C. § 707(b)(2)(B)(iii)(I). For these Debtors, that is the monthly contract payment of \$3,121.00. It is not the court's discretion to determination that such amount (equal to 50% of the Debtors' monthly net income) is unreasonable.

COMPUTATION OF PROJECTED DISPOSABLE INCOME

Both the Chapter 13 Trustee and Creditor have objected to the proposed monthly plan payments. With such objection, pursuant to 11 U.S.C. § 1325(b)(1)(B) this Plan must provide for payment of all of the Debtors' monthly projected disposable income.

The Trustee raises an objection that the Debtors' income does not sufficiently take into account the monies they should be receiving from Burger City, Inc., if it is a viable entity. Schedule I filed by the Debtors provides income information under penalty of perjury. The Debtors state that they have gross wage income from Burger City, Inc. of \$7,400.00 a month. From this \$928.00 a month is withheld for payroll and Social Security Taxes. This is 12.5% of the gross income, with does not appear to be an unreasonably high withholding amount. Mr. Shafer also states that he has an average of \$900.00 a month in real estate commissions. No separate expenses are shown on Schedule J for income taxes, self-employment taxes, or expenses for this real estate business.

The court has constructed the chart below to identify the expenses at issue, the Debtors' statement of expenses, and the expenses permitted pursuant to § 707(b)(2).

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Expense	Schedule J Used To Compute Projected Disposable Income	IRS Expenses Allowed for 3 Persons, § 707(b) (November 2012 - March 31, 2013 filed cases - Solano County, California)	Expense Under/(over) § 707(b) allowed amount	
Mortgage, Including Property Taxes and Insurance	\$3,121	\$3,121	\$0	Statutory Amount Require Pursuant to 11 U.S.C. § 707(b)(2)(B)(iii) (I).
IRS Housing and Utilities standards include mortgage or rent, property taxes, interest, insurance, maintenance, repairs, gas, electric, water, heating oil, garbage collection, telephone, cell phone, internet, and cable.				
Electricity	\$250	\$500	\$250	Non-Mortgage Utilities Standard
Water, Sewer	\$105	Included Above	(\$105)	
Telephone	\$180	Included Above	(\$180)	
Cable, Land Line, Internet	\$120	Included Above	(\$120)	
Home Maintenance	\$100	Included Above	(\$100)	
Additional Household Supplies		\$65	\$65	
Food	\$700	\$639	(\$61)	
Clothing	\$125	\$209	\$84	
Additional 5% Permitted for Food and Clothing		\$42	\$42	
Laundry, Dry Cleaning	\$0			
Medical, Dental	\$100	\$180	\$80	
Personal Care Products & Services		\$63	\$63	
Transportation	\$500	\$612	\$112	
Auto Insurance	\$300	Included	(\$300)	

Recreation	\$150		(\$150)	
Charitable	\$50	\$50	\$0	
Life Insurance	\$163	\$163	\$0	
Vehicle Registration	\$30		(\$30)	Included in Transportation Expense
Miscellaneous		\$251	\$251	
School Activities	\$130	Included Above	(\$130)	
Total	\$6,124	\$5,895	(\$229)	
	Schedule J	707(b) Expenses	Additional/ (Excessive) Expenses	

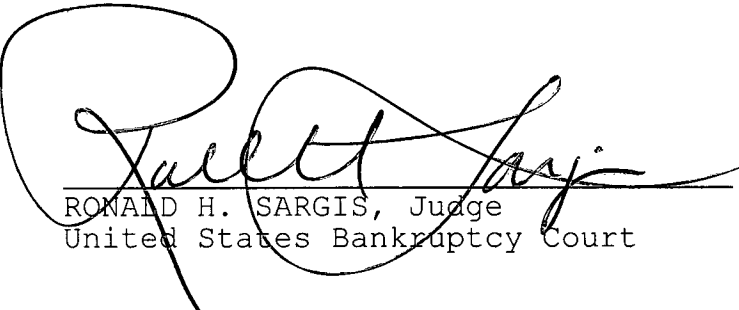
Even without addressing the actual, reliable Burger City, Inc. income, the Debtors run afoul the mechanical computation of expenses and disposable income under § 1325(b)(2), from which projected disposable income is generated. *Hamilton v. Lanning*, 560 U.S. 505, (2010); *Drummond v. Welsh*, *supra*. As show by the chart above, applying the mechanical computation methodology mandated by 11 U.S.C. § 707(b)(2) and allowing for the contract secured payment, the Debtors' expenses exceed the allowed amount by \$229.00 a month.

With net income of \$6,372.00 a month (this is consistent with the Form 22C stated income) and § 707(b) expenses of (\$5,895.00), the court computes the net projected disposable income to be \$477.00 a month. The Debtors have not presented the court with a sufficient basis for further increasing the expenses to the extent permitted under 11 U.S.C. § 1325(b)(2)(B). The Chapter 13 Plan presented to the court provides for payment of only \$248.00. Plan, Dckt. 5. This under funds the Plan by \$229.00 a month.

1 The proposed Chapter 13 Plan does not comply with the
2 requirements of 11 U.S.C. §§ 1322 and 1329, and the motion is
3 denied.

4 This Memorandum Opinion and Decision constitutes the court's
5 findings of fact and conclusions of law pursuant to Federal Rule of
6 Civil Procedure 52 and Federal Rules of Bankruptcy Procedure 7052,
7 9014. The court shall issue a separate order consistent with the
8 Decision.

9 Dated: October 22, 2013

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12 RONALD H. SARGIS, Judge
13 United States Bankruptcy Court
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC or, if checked _____, via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case), and
XX Other Persons Specified Below:

Office of the U.S. Trustee
Robert T. Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

Gloria M. Oates
2377 Gold Meadow Way, Ste. 215
Gold River, CA 95670